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IN THE

Supreme Court of the United States

OCTOBER TERM, [redacted] '49

No. [redacted] 48

ROSETTE SORGE SAVORGNAN,
Petitioner,

against

THE UNITED STATES OF AMERICA, TOM C. CLARK, the Attorney General for the United States of America and WATSON B. MILLER, Commissioner of Immigration and Naturalization Service,
Respondents.

BRIEF OF *AMICUS CURIAE* IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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Dated: April 27, 1949.

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zen, who has in no way failed in her duties and loyalty to this country, lose her United States citizenship by mistake?

For the purpose of the argument of the *amicus curiae* (although petitioner takes a contrary view), it will be conceded that petitioner performed one of the acts proscribed by applicable federal statutes governing expatriation.* In order to make her marriage to Savorgnan possible, she became an Italian national. However, in view of the findings of the District Court (*supra*), it must likewise be conceded that petitioner, in performing such act, had no intention of renouncing or divesting herself of her United States citizenship and was not aware that such might be the result of her act. On the contrary, relying on her husband's assurances, she proceeded in the belief that she was merely acquiring a technical Italian citizenship which would in no way endanger her United States citizenship.

On this state of facts, the District Court, citing the opinion of this Court in *Perkins* v. *Elg*, 307 U. S. 325 (1939), concluded that expatriation was a "matter of intent", that knowledge is necessary to intent, that petitioner did not "knowingly renounce or relinquish her American citizenship", and that she was, therefore, entitled to judgment "declaring her to be an American citizen".

The Court of Appeals reversed. On this point, the Court, noting that petitioner had voluntarily acquired

* The statutes involved in the case here for review are the Act of March 2, 1907 (34 Stat. 1228), (8 U.S.C.A. 16, 17), and Nationality Act of 1940 (Oct. 14, 1940, Title I, Chap. IV, 54 Stat. 1137, 1168) (8 U.S.C.A. §801, *et seq.*). The petitioner and respondent herein are in disagreement as to which statute governs the instant controversy. In the view which the *amicus curiae* takes, it is unimportant which statute governs. The relevant parts of these statutes are set forth in an appendix hereto.

Italian nationality, held that her subjective intent, misinformation as to the legal consequences of her acts, and motivations for her conduct were immaterial, stating (at p. 159)

> "If these factors were permitted consideration, the operation of the statute would depend not upon the voluntarily performed act of becoming naturalized in a foreign state, but upon the extent of the legal knowledge and the subjective intention or motivation of the person involved. Such tests cannot be used to determine the operation of the statute."

Therein we believe the Court erred. It is our position that in determining the operation of the statute, dealing, as it does, with the basic and precious rights of citizenship, it is not only proper, but imperative, that the Courts give full consideration to such factors.

This is not a case involving a crime or other wrongful act, or the contractual rights of third persons, where the Courts apply the maxim *ignorantia legis neminem excusat. Queen* v. *Mayor, etc. of Tewkesbury*, L. R. 3, Q. B. 629; *Brock* v. *Weiss*, 44 N. J. L. 241 (1882); *Harper* v. *Atlanta and W. P. R. Co.*, 33 Ga. App. 259, 125 S. E. 885 (1924); *Cutler* ads. *State*, 36 N. J. L. 125 (1872). This is a case involving the personal rights of the petitioner alone, her rights to citizenship in the land of her birth. These rights, it is submitted, are not technical ones surrounded by pitfalls into which the unwary may stumble, but rather are natural and fundamental rights which a citizen can not relinquish by inadvertence or mistake or otherwise than by his conscious, voluntary and intentional act of renunciation and abandonment.

If the decision of the Court of Appeals be deemed correct and petitioner be deemed, by her acts, to have relin-